

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 23-01822

PRESENT: LINDLEY, J.P., CURRAN, BANNISTER, OGDEN, AND DELCONTE, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CALEB BRUNDIGE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (PAUL B. CURTIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (JERRY MARTI OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (M. William Boller, A.J.), rendered October 18, 2023. The judgment convicted defendant, upon a plea of guilty, of criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]). We affirm.

Defendant contends that Supreme Court erred in refusing to suppress physical evidence, specifically a gun, because it was recovered during an unlawful inventory search of the vehicle that he was driving. We reject that contention. "[W]here a vehicle has been lawfully impounded, the inventory search itself must be conducted pursuant to 'an established procedure' that is related 'to the governmental interests it is intended to promote' and that provides 'appropriate safeguards against police abuse' " (*People v Walker*, 20 NY3d 122, 126 [2012], quoting *People v Galak*, 80 NY2d 715, 716 [1993]; see *People v Tardi*, 122 AD3d 1337, 1338 [4th Dept 2014], *affd* 28 NY3d 1077 [2016]). "While incriminating evidence may be a consequence of an inventory search, it should not be its purpose" (*People v Johnson*, 1 NY3d 252, 256 [2003]). In following that procedure, which must be standardized in order to limit officer discretion, the police must produce a "meaningful inventory list" (*id.* at 256).

Here, the evidence at the suppression hearing established that it is the policy of the Buffalo Police Department (BPD) to tow a vehicle in its control whenever, inter alia, it is necessary to safeguard the vehicle and its contents from damage or theft, the vehicle presents a

hazard or inconvenience to the public, or the vehicle is not drivable and the owner is unable to make arrangements for immediate private towing. Here, the police properly decided to tow and impound defendant's vehicle because the vehicle's registration had been suspended due to a lack of valid insurance coverage, rendering it unlawful to operate the vehicle on the road (see *People v Williams*, 214 AD3d 1395, 1396 [4th Dept 2023], *lv denied* 40 NY3d 931 [2023]; *People v David*, 209 AD3d 1276, 1277 [4th Dept 2022]; see also Vehicle and Traffic Law §§ 318 [1] [a]; 512). Defendant's contention that the police did not lawfully impound his vehicle under BPD policy because they did not first inquire into whether he could have the vehicle privately towed is unpreserved for our review because it was not raised in defendant's suppression motion and was not addressed by the court (see generally CPL 470.05 [2]; *People v Peterson*, 240 AD3d 1194, 1195 [4th Dept 2025]; *People v Jacque-Crews*, 213 AD3d 1335, 1336 [4th Dept 2023], *lv denied* 39 NY3d 1111 [2023]).

We further conclude that the evidence at the suppression hearing established that "the police followed the procedure set forth in the applicable [policy] of the [BPD] in conducting the inventory search" (*People v Nesmith*, 124 AD3d 1325, 1326 [4th Dept 2015], *lv denied* 26 NY3d 1042 [2015]; see *Williams*, 214 AD3d at 1396; *People v Wilburn*, 50 AD3d 1617, 1618 [4th Dept 2008], *lv denied* 11 NY3d 742 [2008]). Specifically, the witness testimony, inventory search form, and the body-worn camera (BWC) footage depicting the inventory search demonstrated the police officer's compliance with BPD policy, and showed that a meaningful inventory list resulted (see *People v Hayden-Larson*, 179 AD3d 1549, 1550 [4th Dept 2020], *lv denied* 35 NY3d 970 [2020]; *People v Morman*, 145 AD3d 1435, 1436 [4th Dept 2016], *lv denied* 29 NY3d 999 [2017]; *People v Owens*, 39 AD3d 1260, 1261 [4th Dept 2007], *lv denied* 9 NY3d 849 [2007]). Although the BWC footage and testimony established that the police failed to list several items found inside the vehicle on the inventory form and did not describe some of the items included on the form in great detail, we note that an " 'inventory search [is] not rendered invalid [merely] because the officers failed to secure and catalogue every item found in the vehicle' " (*Hayden-Larson*, 179 AD3d at 1550; see *Morman*, 145 AD3d at 1436; *Owens*, 39 AD3d at 1261) and that it is not for "courts to micromanage the procedures used to search properly impounded cars" (*Walker*, 20 NY3d at 127). We also reject defendant's contention that comments made by one of the police officers who was present during the inventory search, when coupled with the aforementioned deficiencies in the inventory search procedure, rendered the search an improper pretextual search of the vehicle (see *Johnson*, 1 NY3d at 256; cf. *People v Cunningham*, 239 AD3d 1418, 1419 [4th Dept 2025]).

Finally, we reject defendant's contention that his sentence is unduly harsh and severe.